

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Fidelity and Deposit Company of Maryland,  
Plaintiff

2:13-cv-00380-JAD-GWF

v.  
Big Town Mechanical, LLC; Travelers  
Casualty and Surety Company of America,  
Defendants

## **Order Granting Motion to Dismiss Claims against Controlco**

[ECF Nos. 331, 343]

**ALL OTHER CLAIMS/PARTIES**

In this surety-coverage dispute, plaintiff Fidelity and Deposit Company of Maryland brought third-party claims against Controlco. With Controlco's motion for summary judgment on those claims pending,<sup>1</sup> Fidelity and Controlco jointly move to dismiss Fidelity's claims against Controlco and deny Controlco's summary-judgment motion as moot. They also ask me to order that Fidelity may call Controlco's expert Don Koch, P.E., as a witness and introduce his expert reports at trial.<sup>2</sup>

Good cause appearing, the motion to dismiss [ECF No. 343] is GRANTED. Fidelity's third-party claims against Controlco are hereby DISMISSED with prejudice, and Controlco's motion for summary judgment [ECF No. 331] is DENIED as moot.

However, Fidelity has not demonstrated that an order permitting it to call Mr. Koch is necessary or appropriate at this time, or that his expert report (which typically constitutes hearsay) should be admitted at trial. These requests should be brought as a motion in limine after complying with Local Rule 16-3 and its meet-and-confer requirements. So, **to the extent that**

<sup>1</sup> ECF No. 331.

<sup>2</sup> ECF No. 343.

1 this motion [ECF No. 343] also seeks in limine rulings about the use of Mr. Koch and his  
2 report, it is DENIED without prejudice to Fidelity's ability to bring a proper motion in limine.

DATED: March 20, 2018.

U.S. District Judge Jennifer A. Dorsey